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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.03.2022	16.03.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 4151 OF 2022

P.Kandasamy

.. Petitioner

- Vs -

1. The Inspector General of Registration
Santhome High Road
Santhome, Chennai 600 028.

2. The Sub Registrar
Mudukkarai Sub Registrar Office
Madukkarai, Coimbatore.

3. N.Balakrishnan

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent by proceedings in No.687/2021 dated 14.02.2022 and quash the same and consequently direct the 2nd respondent to forthwith register the settlement deed dated 11.08.2021 presented by the petitioner without insisting for the production of the original parent document.

For Petitioner : Mr.Saravana Sowmiyan

For Respondents: Mr. R.Kumaravel, AGP for RR-1 & 2
Mr. P.Wilson, SC, for Mr. V.P.Raju for R-3

ORDER

The present petition has been filed to quash the impugned proceedings of the 2nd respondent, in and by which the settlement deed submitted by the petitioner for registration has been rejected and for a consequential direction to the 2nd respondent to register the settlement deed without insisting production of the original parent document.



2. On the consent expressed by the learned counsel appearing for either side, the main writ petition itself is taken up for final disposal.

3. It is the case of the petitioner that he is the owner of the property in SF No.148, 144/2, 146/3C and 147 to an extent of 7.50 acres situated at Pichanur Village, Madukkarai Taluk, Coimbatore by virtue of registered sale deeds and he is in peaceful possession and enjoyment of the said properties. It is the further averment of the petitioner that when the petitioner sought to register the settlement deed executed in favour of his daughters, the same was refused to be registered by the 2nd respondent on the basis of the objection raised by the 3rd respondent, who has alleged pendency of an unregistered sale agreement between the petitioner and the 3rd respondent dated 3.3.2014 and also citing pendency of O.S. No.6/2022, instituted by the 3rd respondent on the file of the III Addl. District Judge, Coimbatore for specific performance.

4. It is the further averment of the petitioner that adjacent land owners had previously approached the petitioner to sell the property for good market price and believing the words of the said persons, the petitioner had parted with the original documents and on the strength of the original documents, a forged power of attorney was fabricated by the said persons and presented for registration to which the petitioner filed his objections which resulted in the return of the said document. Thereafter, the petitioner had taken steps to retrieve the said original documents, but in vain.

5. It is the further averment of the petitioner that intending to settle the property in favour of his daughters, the petitioner executed a settlement deed on 11.08.2021, which was presented for registration. However, the 2nd respondent refused to receive the same and issued the return check slip mandating production of original parent document, which resulted in the petitioner filing W.P. No.19226/2021 before this Court and this Court, vide order dated 13.12.2021, directed the respondent to receive the certified copy of the parent document and consider the same and pass appropriate orders.

6. Pursuant to the order of this Court, when the petitioner requested registration of the settlement deed by submitting the relevant documents, including the certified copy of the original documents, yet the 2nd respondent informed the petitioner that objection has been raised by the 3rd respondent claiming that an unregistered sale agreement has been entered between the petitioner and the 3rd respondent on 3.3.14 and failing execution of the same, O.S. No.6 of 2022 has been filed on the file of the



III Addl. District Judge, Coimbatore, for specific performance, which is pending.

7. It is the further averment of the petitioner that the petitioner has no connection whatsoever with the 3rd respondent and has not entered into any sale agreement with the 3rd respondent. It is the case of the petitioner that the said sale agreement is a rank forgery and against the same, the petitioner has lodged complaint with the Superintendent of Police, Coimbatore. The petitioner has also filed Crl. O.P. No.696 of 2022 against the inaction of the police authorities in taking action on the petitioner's complaint and this Court, vide order dated 20.1.2022 directed the petitioner to appear before the Inspector of Police, Madukkarai Police Station on 24.1.2022 with all the documents and the authority was directed to take action in the manner known to law. In spite of the said order, no FIR has been registered till date.

8. It is the further averment of the petitioner that the 3rd respondent filed W.P. No.396/2022 praying to reject the settlement deed executed by the petitioner on the basis of the objection made by the 3rd respondent on 27.12.2021 and, this Court, vide order dated 12.01.2022, dismissed the said writ petition holding that the subject property is the subject matter of suit in O.S. No.6/2022 on the file of the III Addl. District Judge, Coimbatore and the petitioner was directed to furnish all the documents in his possession during the enquiry to be conducted by the 2nd respondent herein and the said respondent was directed to pass appropriate orders in line with the order passed in W.P. No.19226/2021.

9. It is the further averment of the petitioner that based on the said order, the 2nd respondent conducted enquiry and passed the impugned proceedings dated 14.2.2022 refusing to register the settlement deed dated 11.8.2021 on the ground that suit is pending in respect of the subject property and that registering the settlement deed will only create further encumbrance over the property. Aggrieved by the said order passed by the 2nd respondent, the present writ petition has been filed.

10. Learned counsel appearing for the petitioner submitted that the order passed by the 2nd respondent is wholly illegal, perverse, arbitrary and suffers with very many infirmities. It is the further submission of the learned counsel that the sale agreement, which is pressed into service by the 3rd respondent, dates back to the year 2014, but the 3rd respondent has filed the suit only in the year 2022, after a period of about eight years, which delay has not been explained. It is the submission of the learned counsel that without admitting that the sale agreement



entered into between the petitioner and the 3rd respondent, when it is the specific case of the 3rd respondent that a sale agreement has been entered into between the petitioner and the 3rd respondent on 3.3.2014, the 3rd respondent has not come out with any materials to show the steps taken by him to take the sale agreement to its logical end. It is the further submission of the learned counsel that it is the pointed case of the petitioner that he does not know the 3rd respondent and has, in fact, no connection with the 3rd respondent and it is the claim of the petitioner that the sale agreement, which has been projected by the 3rd respondent is a forged document. It is the further submission of the learned counsel that the suit having been instituted only in the year 2022 and no interim orders having been obtained by the 3rd respondent on the date when the settlement deed was executed and presented for registration, there is no bar for the 2nd respondent to entertain the sale agreement, as mere filing of the suit by the 3rd respondent would not be a ground to reject the settlement deed to be executed by the petitioner. It is the further submission of the learned counsel that the registration of the settlement deed would date back to the date of execution of the settlement as held by the Hon'ble Supreme Court in Hamda Ammal - Vs - Avadiappa Pathar (1991 (1) SCC 715).

11. It is the further submission of the learned counsel for the petitioner that if really the 3rd respondent had entered into the sale agreement as alleged by him, the 3rd respondent would not have kept silent for such a long time to have the sale deed executed. It is the further submission of the learned counsel that even the suit in O.S. No.6/2022 filed by the 3rd respondent is bereft of any particulars as to the manner in which the payments alleged in the said suit, has been paid to the petitioner. It is the further submission of the learned counsel that the interim order obtained after the execution of the settlement deed and its presentment for registration cannot be put against the petitioner to have the settlement deed registered as the registration of the settlement will date back to the date of execution of the settlement deed. It is therefore the submission of the learned counsel that all the above would clearly reveal that the attempt by the 3rd respondent to stall the execution of the settlement deed is only with a view to aid his ulterior motives and nefarious ideas to grab the properties and the act of the 2nd respondent in not appreciating the above and refusing to register the settlement deed clearly shows that the 2nd respondent is hand in glove with the 3rd respondent.

12. In support of his submissions, learned counsel for the petitioner relied on the following decisions :-



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- i) N.Ramayee - Vs - The Sub Registrar & Ors. (2020 (6) CTC 697;
- ii) Sivanadiyan - Vs - The Sub Registrar, Pudukottai (W.P. (MD) No.19745/2020 - Dated 11.2.2021) ; and
- iii) Vadamugam Vellode Nalukarai Nattu Goundergal Sangam - Vs - Inspector General of Registration & Ors. (2021 (1) CTC 535)
- iv) Hamda Ammal - Vs - Avadiappa Pathar & Ors. (1991 (1) SCC 715)

13. Per contra, learned senior counsel appearing for the 3rd respondent, in addition to the averments raised in the counter filed by the 3rd respondent, further submitted that reasons have been adduced in the plaint filed in O.S. No.6/2022 for the delay in filing the suit. It is the further submission of the learned senior counsel for the 3rd respondent that amounts have been paid by the 3rd respondent to the petitioner at the time of entering into the sale agreement and, thereafter, as well, which were witnessed by the persons, who stood as witnesses and without the same being tested in a manner known to law in the suit, permitting registration of the settlement deed would cause grave prejudice to the 3rd respondent and would create encumbrance against the property. It is the further submission of the learned counsel for the 3rd respondent that merely because there is delay in the lodging of the suit would not be taken to mean that the document is a forged one. It is the further submission of the learned counsel that when there is a sale agreement based on which the suit is filed for specific performance, unless the said suit is decided one way or the other, allowing the settlement deed to be registered would be wholly unreasonable, arbitrary, perverse and irrational. It is the further submission of the learned counsel that temporary injunction has also been granted in I.A. No.2/2022 vide order dated 7.3.2022 and that being the case, injunction having already been granted, the 2nd respondent cannot register the settlement deed. Therefore, learned counsel prays for dismissal of the petition.

14. Learned Addl. Government Pleader appearing for respondents 1 and 2 submitted that the 2nd respondent, with a view to avoid multiplicity of litigations, in view of the pendency of the suit, has passed the impugned order rejecting the settlement deed submitted by the petitioner and based on the outcome of the suit the parties may approach the 2nd respondent for registration of the document. It is therefore submitted that no interference is warranted with the order passed by the 2nd respondent.



15. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

16. It is not in dispute that the petitioner had executed the settlement deed on 11.8.2021 and presented the same for registration before the 2nd respondent, which was initially refused to be registered, which led to the filing of W.P. No.19226/21 in which the petitioner was directed to produce certified copy of the parent deed and the respondent was directed to consider the same and pass orders. It is also borne out by record that pursuant to the same, the petitioner had presented the settlement deed for registration, at which point of time, the 3rd respondent had come into the picture with objection. Thereafter, series of litigations and actions have taken place, including complaint being lodged before the law enforcing agency and in the petition filed by the 3rd respondent in W.P. No.396/2022, vide order dated 12.1.2022, the petition was dismissed directing the 2nd respondent to conduct enquiry and the petitioner was directed to furnish all the documents during enquiry. In the enquiry, the petitioner was not able to produce the original sale deeds and had produced only certified copy of the sale deeds, which were not accepted by the 2nd respondent leading to the rejection at the earliest point of time.

17. The pivotal contention of the 3rd respondent is that injunction having been granted in I.A. No.2/2022 in O.S. No.6/2022, the 2nd respondent cannot register the settlement deed. Though such an argument, ex-facie, appears attractive, but the same does not deserve acceptance for the reason that the settlement deed was executed on 11.8.2021 and presented for registration, which has not been registered for the reasons aforesaid. What is the effect of the injunction order on a document, which has been executed and tendered for registration before an order of injunction has been considered by the Hon'ble Supreme Court in Hamda Ammal - Vs - Avadiappa Pathar & Ors. (1991 (1) SCC 715), wherein the Hon'ble Supreme Court held as under :-

"4. Section 54 of the Act defines sale as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". Thus after the execution of the sale deed with consideration all the ingredients of sale are fulfilled except that in case of tangible immovable property of the value of Rs. 100 and upwards it can be made only by registered instrument. Now, if we read Section 47 of the Registration Act, it clearly provides that a registered document shall operate from the time from which it would have commenced to operate if



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no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution. In case of dispute regarding the execution of the document an enquiry is permitted under Section 74 (a) of the Registration Act and that may also take some time. The legislature being alive to such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act."

(Emphasis Supplied)

18. From the above, it is clear that the date to be reckoned with for the purpose of determining the document to have come into force is the date of its execution and not the date when the same is submitted for registration or actually registered. That being the case, the settlement deed having been executed on 11.8.2021, it is deemed to have come into force on the date of its execution and, therefore, the injunction granted in I.A. No.2/2022 would not nullify the execution of the said document and would not in any way affect the settlement deed executed by the petitioner in favour of his daughter.

19. Be that as it may. It is the case of the petitioner that the original document was not available with the petitioner, as it is in the custody of some third party, who had shown intention to purchase, which prevented him from submitting the same at the time of registration of the settlement deed. It is to be pointed out that the return of the check slip by the 2nd respondent had resulted in the filing of W.P. No.19226/2021, which resulted in an order being passed by this Court on 13.12.2021 permitting the petitioner to submit all the documents



along with a certified copy of the parent deed upon which the respondent was directed to conduct enquiry and pass orders.

20. However, during enquiry, on the basis of the the objection raised by the 3rd respondent, the settlement deed was returned without being registered. The 3rd respondent had filed W.P. No.396/2022 to reject the settlement deed based on his objection, which was dismissed by this Court vide order dated 12.01.2022 directing the concerned respondent to conduct an enquiry upon the parties furnishing the requisite documents at the time of enquiry and pass appropriate orders. It is to be borne in mind that even in W.P. No.19226/2021, this Court had permitted the petitioner to submit certified copy of the parent document before the respondent.

21. However, inspite of the orders of this Court in W.P. No.19226/2021, which has to be read in continuation to the order passed in W.P. No.396/2022, the petitioner has been visited with the impugned order. The basis on which the impugned order has been passed is that the suit is pending and any transaction pending the suit would unnecessarily create legal complications in the form of creating fresh encumbrances.

22. In this regard, reliance has been placed on the decision in Ramayee's case (supra), wherein the Division Bench of this Court, on a reference made to it on a question of law, considering the various statutes and the provisions of law and the law on the subject relating to subsequent transfer pending a suit or a sale agreement, held as under :-

"43. From a combined reading of various provisions of the Transfer of Property Act as referred above, we are of the view that there is no bar for creating subsequent transfer of the immovable property. Effect of the subsequent transfer is always subject to the earlier transfer created by the transferor of the immovable property. Therefore, it cannot be said that since the agreement for sale is registered the owner viz., the Vendor has no right to execute any document. In Venkatamma's case [W.P.No.33601 of 2019] in fact settlement deed has been presented for registration by the Vendor after three years of the so called contract. Merely on the basis of the agreement for sale, the registrar refused to register the document which is against the very substantive law of the country. If such approach is accepted a situation may arise in every loan transaction if some contract is registered, merely because it shown



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in the encumbrance as a registered agreement, the owners of the property would be prohibited from dealing with the property as long as the encumbrance finds place in the encumbrance certificate. Such situation in fact would lead to deprive the right of the owner of the property to deal with the property which is a constitutional right.

* * * * *

46. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.

47. We are of the view that except as provided in the Registration Act and any other statute, the Registrar has no power to refuse to register a document. Though the object of the Act is to prevent fraud, such occasion arises only where



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some private properties are notified under the Tamil Nadu Private Forest Act. In such case, sale of such property without permission of the Collector of the District is void. Only when such notification is available in respect of any property, the Registrar can verify whether the sanction of the Collector is obtained or not. Similarly, whenever properties have been declared as forest land or elephant corridor, etc., and the notification is available with the Registrar, based on the above notification he can exercise power. Except the above, the Registrar has no power to refuse to register the document.

48. As already indicated, the purpose of registration is only to give a public notice. It is for the buyer or subsequent transferee to make reasonable enquiry. Doctrine of caveat emptor will also apply to every transfer. It is for them to verify the title of the property by making reasonable enquiry. At any event, subsequent transfer will always be subject to the rights already created. Therefore, it cannot be said that merely because agreement for sale is registered without obtaining decree of declaration that such agreement is void, subsequent transfer is prohibited and cannot be registered."

23. The above decision stands squarely attracted to the case on hand. The present case stands on an even more on a better footing, as even according to the 2nd and 3rd respondents, the sale agreement is an unregistered document; whereas the Division Bench, in the decision above, has dealt with a registered document and held that there is no bar for registering a subsequent document by the title holder even in the event of an earlier registered document. Such being the legal position adumbrated by this Court, it is the duty of the 2nd respondent to follow suit and to have registered the said settlement deed.

24. Further, a learned single Judge of this Court, in Vadamugam Vellode Nalukarai Nattu Goundergal Sangam case (supra), in similar circumstances, considering the pendency of the suit, held that in the absence of any law, mere pendency of the suit will not bar taking place of any transaction and to that end Section 52 of the Transfer of Property Act provides a solution for transactions that take place during the pendency of the suit. Therefore, any encumbrance created during the pendency of the suit would be subject to Section 52 of the Transfer of Property Act.



25. From the above, it is amply clear that the petitioner had executed the settlement deed and presented the same for registration on 11.8.2021, much prior to the order of injunction on 7.3.22 and, therefore, the document is deemed to have come into force on the date of its execution, as held by the Hon'ble Apex Court in Hamda Ammal's case (supra) and that non-production of the original parent deed cannot be put against the party seeking registration of the document in view of the decision of the Division Bench of this Court in Ramayee's case (supra) and the pendency of the suit cannot bar a party from entering into subsequent transaction as held by this Court in Vadamugam Vellode Nalukarai Nattu Goundergal Sangam case (supra). Therefore, the three-fold contention raised on behalf of the 3rd respondent for objecting grant of relief to the petitioner does not merit acceptance. The petitioner having executed the settlement deed much prior to the order of injunction and the filing of the suit, the 2nd respondent ought to have entertained the settlement deed and registered the same as per Section 47 of the Registration Act and negating the prayer of the petitioner citing that the petitioner has not obtained the original documents from the 3rd respondent and filed it and also citing pendency of the suit for specific performance clearly shows that the order passed by the 2nd respondent is in clear violation of the orders passed by this Court and the same is wholly perverse, illogical, irrational and arbitrary and the same is liable to be set aside.

26. For the reasons aforesaid, the impugned order passed by the 2nd respondent is set aside and this writ petition is allowed. The petitioner is directed to submit the settlement deed along with a copy of this order before the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and on such submission, the 2nd respondent is directed to receive the settlement deed executed by the petitioner and register the same in accordance with law within a period of four weeks thereafter. However, it is made clear that the registration of the said settlement deed will be subject to the judgment/order that would be passed by the III Addl. District Judge, Coimbatore, in O.S. No.6 of 2022, which has been filed by the 3rd respondent for specific performance. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

GLN



To

1. The Inspector General of Registration
Santhome High Road
Santhome, Chennai 600 028.

2. The Sub Registrar
Mudukkarai Sub Registrar Office
Madukkarai, Coimbatore.

+1cc to Mr.V.Praju, Advocate, S.R.No.17868
+1cc to Mr.Saravana Sowmiyan, Advocate, S.R.No.17618
+1cc to the Government Pleader, S.R.No.18129

W.P. NO. 4151 OF 2022

NMI (CO)
PM/22/03/2022